WEE CHOO KEONG

v.

MBf HOLDINGS BHD. & ANOR. AND ANOTHER APPEAL

SUPREME COURT, IPOH
TUN DATO' SERI ABDUL HAMID BIN OMAR LP, DATO' MOHD. EUSOFF BIN CHIN SCJ &
DATUK MOHAMED DZAIDDIN BIN HJ. ABDULLAH SCJ
[SUPREME COURT CIVIL APPEAL NO. 02-155-93 & 02-156-93]
8 MAY 1993

CONTEMPT OF COURT: Leave to issue committal proceedings granted - Substantive notice of motion filed - Party against whom contempt proceedings filed applying to set aside injunction - Whether party in contempt can be heard before purging the contempt.

The respondents obtained an *ex parte* interlocutory injunction against the appellants. The respondents claimed that the appellants breached the injunction and obtained leave *ex parte* to issue proceedings against the appellants to commit them to prison for their contempt. The appellants filed an application to set aside the injunction and when the application came up for hearing the respondents objected contending that the contempt proceedings should be heard first.

The trial Judge ruled that he would hear the contempt proceedings first and having disposed of it, would then deal with the appellants application to set aside the injunction. The appellants being dissatisfied with the ruling appealed.

The appellants contended that there must first be a finding of contempt and a sentence passed on that finding before the rule that a party in contempt cannot be heard further in the same proceedings for his own benefit unless and until he has purged his contempt can be invoked. The appellants argued that a party alleged to be in contempt is not in a position to purge his contempt until sentence has been passed. The appellants also argued that where a party alleged to be in contempt was applying to set aside the very order of which he is said to be in contempt, the general rule was not applicable.

Held:

[1] There are no exceptions *per se* to the general rule that a party in contempt cannot be heard until he has purged his contempt. A qualification that the rule would only apply where a writ of attachment or an order of committal had been made would be to place an unnecessarily low burden of obedience on the offending party. The rational for the rule is public policy. Orders of Court must be treated with respect and require strict obedience.

[2] Although the right to be heard is a fundamental right vested in all litigants, where the litigant shows himself to have little or no regard to an order issued against him, then he has to a certain extent forfeited his right to be heard or at least postponed that right until he has suitably purged his contempt.

[3] The learned Judge had granted leave to issue committal proceedings and had accepted that there was a *prima facie* case for contempt against the appellants. The learned Judge had ample material before him to exercise his discretion in the manner in which he did and there was nothing to show that the learned Judge had exercised his discretion wrongly or that he was wrong in law or had erred in principle.

[Appeals dismissed with costs].

[**Bahasa Malaysia** Translation of Headnote]

PENGHINAAN MAHKAMAH: Kebenaran untuk mengeluarkan prosiding komital dibenarkan - Notis usul yang substantif difailkan - Pihak di mana prosiding penghinaan difailkan terhadapnya memohon untuk mengenepikan injunksi - Sama ada pihak yang menghina boleh didengar sebelum membersihkan penghinaan.

Responden memperolehi injunksi interlokutori *ex parte* terhadap perayu. Responden mendakwa bahawa perayu melanggar injunksi tersebut dan memperolehi kebenaran *ex parte* untuk mengeluarkan prosiding terhadap perayu bagi memasukkan mereka ke dalam penjara atas penghinaan. Perayu memfailkan permohonan untuk mengenepikan injunksi tersebut dan apabila permohonan itu didengar responden telah membantah dengan membahaskan bahawa prosiding penghinaan seharusnya didengar dahulu.

Hakim perbicaraan telah memutuskan bahawa beliau akan mendengar prosiding penghinaan dahulu dan setelah menyelesaikannya, akan berurusan dengan permohonan perayu untuk mengenepikan injunksi yang berkenaan. Perayu yang tidak berpuashati dengan keputusan telah merayu.

Perayu membahaskan bahawa mula-mula sekali mestilah ada kedapatan mengenai penghinaan dan hukuman diberikan ke atas kedapatan itu dahulu sebelum perintah bahawa sesebuah pihak yang menghina tidak boleh didengar selanjutnya dalam prosiding yang sama bagi faedahnya sendiri melainkan dan sehingga ia telah membersihkan penghinaannya dapat digunakan. Perayu mendebatkan bahawa sesebuah pihak yang dikatakan menghina tidak boleh berada dalam kedudukan untuk membersihkan penghinaannya sehingga hukuman dijatuhkan. Perayu juga menghujahkan bahawa dimana sesebuah pihak yang dikatakan menghina memohon untuk mengenepikan perintah yang menyatakan bahawa ia telah menghina, perintah am tidak boleh dipakai.

Diputuskan:

[1] Tiada pengecualian *per se* kepada perintah am bahawa sesebuah pihak yang menghina tidak boleh didengar sehingga ia telah membersikan penghinaannya. Satu kelayakan bahawa perintah tersebut hanya akan terpakai di mana writ penahanan atau perintah komital telah dibuat ialah meletakkan beban kepatuhan yang rendah dan tidak perlu ke atas pihak yang menghina. Kerasionalan bagi perintah tersebut ialah polisi umum. Perintah-perintah Mahkamah mestilah dituruti dengan hormatnya dan memerlukan kepatuhan yang ketat.

[2] Walaupun hak untuk didengar ialah satu hak asasi yang terletakhak kepada semua litigan, di mana litigan tersebut menampilkan dirinya sebagai kurang atau tidak mempedulikan perintah yang dikeluarkan ke atasnya, maka dia telah sedikit sebanyak terlucut haknya untuk didengar atau sekurang-kurangnya menangguhkan hak tersebut sehingga dia membersihkan penghinaannya dengan sesuai.

[3] Hakim yang arif tersebut telah memberikan kebenaran untuk mengeluarkan prosiding komital dan telah menerima bahawa terdapat satu kes *prima facie* bagi penghinaan terhadap perayu. Hakim tersebut mempunyai bahan yang cukup dihadapannya untuk mengamalkan budibicara beliau dalam cara yang beliau telah lakukan dan tiada apa-apa untuk menunjukkan bahawa Hakim tersebut telah mengamalkan budibicara beliau dengan salahnya atau pun beliau tersilap dari segi undang-undang atau tersilap dari segi prinsip.

[Rayuan ditolak dengan kos].

Cases referred to:

Astro Exito Navegacion SA v. Southland Enterprise Co. Ltd. and Nan Jong Iron and Steel Co. Ltd. [1981] 2 LIR 595 ***(cit)***

Hadkinson v. Hadkinson [1952] P 285 ***(cit)***

X Ltd. & Anor. v. Morgan-Grampian (Publishers) Ltd. & Ors. [1990] 2 All ER ***(foll)***

Instituto Bancario San Paolo Di Torino SPA v. Colour Touch Sdn. Bhd. & Anor [1993] 3 CLJ 34 ***(dist).***

Young v. Jackman [1986] 7 NSWLR 97 ***(foll)***

For the appellant (SCCA No. 02-155-93) - Lim Kean Chye (C.C. Wee and Ivan Wong with him); M/s. Wee Choo Keong & Faaiz

For the appellant (SCCA No. 02-156-93) - Karpal Singh; M/s. Karpal Singh Co.

For the respondent (SCCA No. 02-155-93 & 02-156-93) - G. Sri Ram (D. Morais, Loh Siew Cheang and H.H. Tay with him); M/s. Cheang & Ariff

JUDGMENT

Abdul Hamid bin Omar LP:

These two appeals arise out of a decision given by Anuar J. on 23 March 1993 in respect of a procedural objection taken by the respondents. The appellants in Civil Appeal No. 02-156-93 are the 1st and 2nd defendants in the proceedings in the Court below whilst the appellant in Civil Appeal No. 02-155-93 is the 3rd defendant in those proceedings. For the sake of convenience, we shall refer to them as the 1st, 2nd and 3rd appellants, respectively.

The Background

On 9 February 1993, the respondents obtained an *ex-parte* interlocutory injunction restraining the appellants from doing certain acts, including printing, circulating, distributing or publishing any allegation of impropriety, irregularity or illegality against the respondents or their subsidiaries and affiliated companies.

The respondents' case in the Court below is that the appellants breached the injunction and are accordingly in contempt of Court. On that basis, the respondents, on 23 February 1993 obtained leave *ex-parte* to issue proceedings against the appellants to commit them to prison for their contempt.

On 25 February 1993 the respondents filed their substantive Notice of Motion which is enclosure 27 in the High Court file. Meanwhile, on 20 February 1993 the appellants filed an application to set aside the injunction. That application, which was made by a summons returnable in chambers, is enclosure 21 in the High Court file.

On 2 March 1993, both enclosures 21 and 27 came on for hearing before the learned Judge. As at that date, the 3rd appellant had filed a summons to strike out the writ (the filing having been done on 1 March 1993) and this summons was on its face returnable on 3 March 1993. This application is enclosure 33 in the High Court file. The learned Judge's note, however, reflects that only enclosures 21 and 27 were before him for hearing on 2 March 1993. The appellants made some issue about this and we shall deal with it at the appropriate place in this judgment.

Due to insufficient time, the hearing scheduled for 2 March 1993 was adjourned to 3 March 1993 and again adjourned to 5 March 1993. And it seems clear that what was to be heard on 5 March 1993 were enclosures 21 and 27.

Preliminary Objection

When the hearing on enclosure 21 was about to commence before the learned Judge, Counsel for the respondents took a preliminary objection. He argued that the appellants ought not to be permitted to be heard on enclosure 21 until after enclosure 27 had been disposed of. After hearing lengthy arguments by Counsel on both sides, the learned Judge reserved his ruling which he delivered on 23 March 1993. He ruled that he would take enclosure 27 first and having disposed of it, would then deal with enclosure 21. The appellants are dissatisfied with the ruling. Hence the appeals.

Procedural Ruling

We would observe that this is clearly an appeal against a mere procedural ruling. This Court has always discouraged such appeals as they stand in the way of a speedy disposal of substantive trials and delay an expeditious result of the main proceedings. Be that as it may, on a closer examination of the matter, we are inclined to agree with Mr. Lim Kean Chye of Counsel for the 3rd appellant and Mr. Karpal Singh of Counsel for the 1st and 2nd appellants that matters of public interest and of principle are involved in these appeals.

Central in these appeals lies the important principle governing the rights, if any, of defendants who disobey orders of Court and then come forward to set aside the order disobeyed or to seek other relief from the Court.

Obedience to Court Order

It is established law that a person against whom an order of Court has been issued is duty bound to obey that order until it is set aside. It is not open for him to decide for himself whether the order was wrongly issued and therefore does not require obedience. His duty is one of obedience until such time as the order may be set aside or varied. Any person who fails to obey an order of Court runs the risk of being held in contempt with all its attendant consequences.

It has not been seriously disputed and indeed we find that it is also an established general rule of law that a party in contempt cannot be heard further in the same proceedings for his own benefit unless and until he has purged his contempt. The question which we have to determine in these appeals is the ambit of that general rule.

Appellants' Contention

It has been urged on us by Counsel for the appellants that there must first be a finding of contempt and a sentence passed on that finding before the rule can be invoked; the argument being that the party alleged to be in contempt is not in a position to "purge" his contempt until sentence has been passed. It has also been urged on us that an exception to the general rule exists where the party alleged to be in contempt was applying to set aside the very order of which he is said to be in contempt. *Astro Exito Navegacion SA v. Southland Enterprise Co. Ltd. and Nan Jong Iron and Steel Co. Ltd.* [1981] 2 LIR 595 and the judgment of Romer LJ in *Hadkinson v. Hadkinson* [1952] P 285 were amongst the authorities cited in support of the exception.

Finding

We are unable to accept that any exceptions *per se* exist to the general rule that a party in contempt cannot be heard until he has purged his contempt. We are in favour of the views expressed by Denning LJ in *Hadkinson (supra)* that it is a matter of discretion depending on the circumstances of the case whether or not a litigant ought to be heard notwithstanding his contempt. This flexible approach to the jurisdiction is based upon a discretion to be exercised in accordance with the circumstances of the case which was accepted by the House of Lords in *X Ltd. & Anor. v. Morgan-Grampian (Publishers) Ltd. & Ors.* [1990] 2 All ER. The recent decision of Abdul Malek J. in *Instituto Bancario San Paolo Di Torina SPA v. Colour Touch Sdn. Bhd. & Anor.* delivered on 5 February 1993 (see [1993] 3 CLJ 34) was cited in support of the proposition that the rule would only apply where a writ of attachment or order of committal had been made. In our judgment, such a qualification on the application of the rule would be to place an unnecessarily low burden of obedience on the offending party. The rationale for the rule is public policy. Orders of Court must be treated with respect and require strict obedience.

In this regard, we are mindful of the competing public interest in a litigant having a right to be heard. Although the right to be heard is a fundamental right vested in all litigants, that right however cannot be taken as an absolute right. Where the litigant shows himself to have little or no regard to an order issued against him, then he has to an extent, forfeited his right to be heard or at least postponed that right until he has suitably purged his contempt.

Prima Facie Case for Contempt

In the appeals before us, leave to issue committal proceedings has been granted. This means that the learned High Court Judge has accepted that there was a *prima facie* case for contempt against the appellants. It may well be that on the hearing of the Motion proper, the appellants will be acquitted of any charge of contempt. However, for purposes of the present appeals, the allegations of contempt are supported by the order for leave. In *Instituto Bancario San Paolo Di Torina SPA (supra),* there appears to have only been an allegation of contempt without any more. Here, there is a finding of *prima facie* contempt which cannot be ignored. In this context, we are more inclined to accept the view expressed by Young J. in *Young v. Jackman* [1986] 7 NSWLR 97 where he said:

> Accordingly, it would seem from 1820 onwards that the rule that a person will not be heard when he is guilty of contempt extended as well to the case where a party was considered to be in contempt, that is, where his contempt **had *prima facie* been demonstrated** to the court or alternatively when he had confessed the facts which were the subject of a charge of contempt.
> (Emphasis added).

We have carefully read the appeal records and especially references made therein to the conduct of the appellants in general and the conduct of the 3rd appellant in particular. This conduct relates to the manner in which the allegations of contempt arose. From the records, we are satisfied that the learned Judge had ample material before him to exercise his discretion in the manner in which he did.

Enclosure 33

This takes us back to the argument advanced during the appeals that no mention was made of enclosure 33 (the striking out application). Having perused the learned Judge's note, it is clear that enclosure 33 was not in fact called on for hearing before him nor was any argument advanced on enclosure 33. There is some brief reference to a striking out application made by Mr. Karpal Singh in the note. However, in the 1st and 2nd appellants' record of appeal, that application was exhibited as an unsealed copy which obviously could not have been before the Court. On each of the dates of hearing the learned Judge has recorded that only enclosures 21 and 27 were before him. Assuming enclosure 33 had been before the learned Judge for hearing and he therefore erred in law in not making any order in respect of it, why was it that the notices of appeal filed by the appellants made no mention of enclosure 33? We can only assume that the reference to enclosure 33 during these appeals was an afterthought.

Exercise of Discretion

It is an established principle that an appellate Court will not interfere with the exercise of a discretionary jurisdiction of the Court below

unless that discretionary jurisdiction was not exercised judicially or was wrong in law. In these appeals, there is nothing to show that the learned Judge had exercised his discretion wrongly. Nor is there any material before us to show that he was wrong in law or had erred in principle. The appellants have not altogether been barred from being heard on their applications to set aside the injunction. All that the High Court has done is to postpone the hearing of those applications until enclosure 27 has been disposed of. This the learned Judge was manifestly entitled to do and his decision to so proceed is in our view entirely correct.

Before we conclude, it is necessary to refer to an argument addressed to us by Mr. Karpal Singh in his final reply where he submitted that the learned Judge had, in the course of his short written ruling refusing a stay of proceeding, shown that he had prejudged the issues before him. The learned Judge in that ruling merely referred to the *prima facie* finding of contempt that he had made and which the law requires him to make on an *ex-parte* application for leave to commit. We are satisfied that there is no merit whatsoever in the attack made upon the learned Judge's comments and findings. Indeed, we are of the view that the learned Judge has left the question of guilt or innocence on the substantive motion completely open.

For these reasons, we dismiss these appeals with costs. The deposits paid into Court by the appellants shall be paid out to the respondents to account of their taxed costs.